



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

ANDREW BRYLOWSKI, MD

**Respondent Name**

TEXAS MUTUAL INSURANCE CO

**MFDR Tracking Number**

M4-17-1089-01

**Carrier's Austin Representative**

Box Number 54

**MFDR Date Received**

DECEMBER 19, 2016

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "There is not a designated set amount of time (or units) an independent examiner can bill for completing Workers' Compensation examinations."

**Amount in Dispute:** \$894.06

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Texas Mutual applied Medicare's MUE edit for practitioner services, a component of the CCI Edits, to the requestor's billing of code 96118...paid the MAR for code G0477. No additional payment is due."

**Response Submitted By:** Texas Mutual Insurance Co.

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 30, 2016	HCPCS Code G0477	\$1.52	\$0.00
	CPT Code 96118 (14Units)	\$892.54	\$892.54
TOTAL		\$894.06	\$892.54

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets out the fee guidelines for reimbursement of professional medical services provided in the Texas workers' compensation system.

3. 28 Texas Administrative Code §127.10, effective September 1, 2012, sets out the Designated Doctor procedures and requirements.
4. 28 Texas Administrative Code §134.1, effective March 1, 2008, 33 *Texas Register* 626, provides for fair and reasonable reimbursement of health care in the absence of an applicable fee guideline.
5. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - CAC-97-The benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated.
  - 641-The Medically Unlikely Edits (MUE) from CMS has been applied to this procedure code.
  - P12-Workers' compensation jurisdictional fee schedule adjustment.
  - 790-This charge was reimbursed in accordance to the Texas medical fee guideline.
  - CAC-W3, 350-In accordance with TDI-DWC rule 134.804, this bill has been identified as a request for reconsideration or appeal.
  - CAC-193-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.
  - 724-No additional payment after a reconsideration of services.

### **Issues**

1. Is the requestor entitled to additional reimbursement for code 96118?
2. Is the requestor entitled to additional reimbursement for code G0477?

### **Findings**

1. The issue in dispute is whether the requestor is due additional reimbursement for neuropsychological testing and services.

According to the explanation of benefits, the respondent paid \$1,218.80 based upon "641-The Medically Unlikely Edits (MUE) from CMS has been applied to this procedure code." The respondent contends that additional reimbursement is not due because "Texas Mutual applied Medicare's MUE edit for practitioner services, a component of the CCI Edits, to the requestor's billing of code 96118."

The requestor contends that additional reimbursement is due because the claimant was evaluated by the requestor in the "capacity of a designated doctor component physician"; and "There is not a designated set amount of time (or units) an independent examiner can bill for completing Workers' Compensation examinations."

28 Texas Administrative Code §127.10(c) states, "The designated doctor shall perform additional testing when necessary to resolve the issue in question. The designated doctor shall also refer an injured employee to other health care providers when the referral is necessary to resolve the issue in question and the designated doctor is not qualified to fully resolve the issue in question. Any additional testing or referral required for the evaluation is not subject to preauthorization requirements nor shall those services be denied retrospectively based on medical necessity, extent of injury, or compensability." Based upon the submitted documentation, the claimant was referred to the requestor by the Designated Doctor Charles Kennedy.

28 Texas Administrative Code §134.204(j)(4)(D)(iii)(II) states, "When the examining doctor refers testing for non-musculoskeletal body area(s) to a specialist, then the following shall apply: (II) The referral specialist shall bill and be reimbursed for the appropriate CPT code(s) for the tests required for the assignment of IR. Documentation is required." On the disputed date of service, the requestor billed CPT codes 96118, G0447 and 99082. CPT code 99082 is not in dispute.

28 Texas Administrative Code §134.203(a)(5) states, "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare."

28 Texas Administrative Code §134.203 (b)(1) states, "For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules."

CPT code 96118 is defined as “Neuropsychological testing (eg, Halstead-Reitan Neuropsychological Battery, Wechsler Memory Scales and Wisconsin Card Sorting Test), per hour of the psychologist's or physician's time, both face-to-face time administering tests to the patient and time interpreting these test results and preparing the report.”

28 Texas Administrative Code §134.204(a)(5) states “Specific provisions contained in the Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program. Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies.” Because the services in dispute are a component of the Designated Doctor examination, they are exempt from Medicare's medical necessity edits; therefore, the respondent's denial based upon “641” is not supported.

The code descriptor for code 96118 indicates that it is billed and reported per hour for the physician's time, both face-to-face time administering the test, interpreting the test and preparing the report. The requestor billed fourteen (14) hours of code 96118. According to the explanation of benefits, the respondent paid \$1,218.80 based upon “641-The Medically Unlikely Edits (MUE) from CMS has been applied to this procedure code.” The September 27, 2016 report, indicates “Total hours of physician time for testing supervision, testing scoring, testing interpretation and report integration of this information was approximately 14 hours.”

Per 28 Texas Administrative Code §134.203(c)(1)(2), “To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications.

(1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$52.83. For Surgery when performed in a facility setting, the established conversion factor to be applied is \$66.32.

(2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors, and shall be effective January 1st of the new calendar year. The following hypothetical example illustrates this annual adjustment activity if the Division had been using this MEI annual percentage adjustment: The 2006 Division conversion factor of \$50.83 (with the exception of surgery) would have been multiplied by the 2007 MEI annual percentage increase of 2.1 percent, resulting in the \$51.90 (with the exception of surgery) Division conversion factor in 2007.”

To determine the MAR the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) X Participating Amount = Maximum Allowable Reimbursement (MAR).

The 2016 DWC conversion factor for this service 58.62

The Medicare Conversion Factor is 35.8043.

Review of Box 32 on the CMS-1500 the services were rendered in zip code 78218, which is located in San Antonio, Texas; therefore the Medicare carrier locality is “Rest of Texas”.

The Medicare participating amount for code 96118 is \$96.00.

Using the above formula, the Division finds the MAR is  $\$157.17/\text{unit} \times 14 = \$2,200.38$  or less. The respondent paid \$1,218.80. The difference between amount paid and MAR is \$981.58. The requestor is seeking a lesser amount of \$892.54. As a result, additional reimbursement of \$892.54 is recommended.

2. HCPCS code G0477 is defined as “Drug test(s), presumptive, any number of drug classes; any number of devices or procedures (e.g., immunoassay), capable of being read by direct optical observation only (e.g., dipsticks, cups, cards, cartridges), includes sample validation when performed, per date of service.”

28 Texas Administrative Code §134.203(d)(1) and (2) states, “The MAR for Healthcare Common Procedure Coding System (HCPCS) Level II codes A, E, J, K, and L shall be determined as follows: (1) 125 percent of the fee listed for the code in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule; (2) if the code has no published Medicare rate, 125 percent of the published Texas Medicaid fee schedule, durable medical equipment (DME)/medical supplies, for HCPCS.”

The Division finds that HCPCS code G0477 does not have a fee listed in DMEPOS fee schedule; therefore, Texas Medicaid rate of  $\$11.36 \times 125\%$  applies, which equals \$14.20. The respondent paid \$18.03. As a result, additional reimbursement is not recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$892.54.

### **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$892.54 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

_____	_____	01/12/2017
Signature	Medical Fee Dispute Resolution Officer	Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**